Dear Education Committee Members:

My name is Jennifer Laviano, and I am an attorney in private practice in Sherman, CT. The focus of my practice is exclusively on the representation of children and adolescents with special education needs under the IDEA. I have filed and litigated literally dozens of Due Process Hearings in CT over the last 12 years.

I write in strong opposition to Raised S.B. 1142, in particular Section 4 regarding the Burden of Proof in Due Process Hearings, and Section 5 regarding terminating special education services upon a student's 21st birthday.

With regard to Section 4, while the IDEA is silent as to which party bears the Burden of Proof in a Due Process Hearing, the Burden has been on the school district in CT for well over a decade now. This stands to reason, as it is the legal requirement of each school district to offer to a student a Free and Appropriate Public Education each year; if a Parent does not believe that has happened, they have a right to challenge the determination of the IEP Team by filing for a Due Process Hearing. What is important for the Committee to understand, however, is that even under our current system, the school district is not asked to "jump" into a hearing and defend their program. When the parents file for a Hearing, EVEN NOW, the Parents STILL have to go first in the Hearing and present their evidence first. This is clearly stated in the State Department of Education's description of the Due Process Hearing structures: the moving party has the burden of production. School districts benefit greatly by this procedure, in fact, because school districts are able to benefit from hearing the parents' case, and then responding to it, rather than having to defend their IEP first. This is different from the Burden of Proof, which merely means that the school district has the burden of proving that they offered an appropriate program. It is important to also know that when Parents are requesting reimbursement for outside services, the Burden of Proof on the appropriateness of the outside services is on the Parents, not the school districts.

Parents already face an "uphill" battle when taking on their school districts, who have the benefit of counsel in almost all cases, have access to expert witnesses "in house," have all of the records of the child, and of course the advantage of having gone through this process many, many times. **We do not have a level playing field now**, even with the Burden being on school districts. If we were to alter the Burden, we would be dramatically undercutting the rights of parents and children to receive a Free and Appropriate Public Education, since the vindication of that right will become even more risky and costly.

I have heard it said that all that switching the Burden would do is to bring CT "in step" with many other states who assign the burden to the moving party. This approach is seriously flawed. Connecticut is a self-professed leader in Education for "regular education" children; why would be expect less for our special education children?

I recognize that economic times are tough, but this approach of taking short cuts in providing programs to children with special needs is a classic example of being "penny wise and pound foolish." Leaving aside that providing appropriate special education services is legally required; leaving aside that it's the right thing to do, let's also remember that it is the financially prudent thing to do, because we either pay for it now, when we might turn a youngster into a taxpayer, or we pay for it later, when we have produced an individual who is dependent on government assistance for life.

This same problem is evident in Section 5 of this bill. In my experience, the two most common types of students who require extended services past a "traditional" graduation are those with significant developmental disabilities, and those with serious emotional disabilities. The programs in place to help these students with their necessary transition services are run, like virtually all educational programs, in a traditional "school year" approach. How are we going to explain to a student that the program they entered in September is "over" for them a month later, simply because they happen to have been born in October? How are we to explain why their peers get to "stay"? For that matter, how are school district administrators supposed to design and implement these programs, with students dropping off every month because they've reached a birthday? Moreover, we are inviting a deprivation of far more than just the months between a student's 21st birthday and the end of that school year if we pass this provision; in practical reality, what is likely to happen is that the student's services will effectively end the June prior to their 21st birthday, as districts will be disincentivized to design a program that will only be in operation for part of the following fiscal year.

Please do not lose site of the larger picture here and rashly cut the procedural and substantive rights of children and adolescents with special needs. The children will lose in the short term, but in the long term, CT will have lost BOTH money AND human potential.

Thank you for your time and attention to this very important matter.